

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5461 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE S.D.PANDIT

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

S G PHARMACEUTICALS

Versus

SARABHAI CHEMICAL STAFF ASSOCIATION

Appearance:

MR.K S NANAVATI, Senior Counsel with Mr.K.D.Gandhi

Advocate for the petitioner

MR MS MANSURI for Respondent No. 2, 3

RESPONDENT NO.1 THOUGH DULY SERVED REMAINED EXPARTE

CORAM : MR.JUSTICE S.D.PANDIT

Date of decision: 16/07/98

CAV JUDGEMENT

#. Rule. In view of the facts and circumstances of the case and with the consent of Mr.K.S.Nanavati and Mr.M.S.Mansuri this petition is taken for final hearing.

#. The petitioner has filed the present petition to challenge the award passed by the Industrial Tribunal, Baroda in Reference No.17 of 1991 published on 4th

June,1997. By the said award petitioner is directed to make payment of 19 % of wages as bonus on the bases of productivity to the employees for the accounting year 1988-89.

#. The petitioner is one of the unit of Ambalal Sarabhai Enterprises Ltd. engaged in manufacturing of pharmaceuticals formulations and bulk drugs. About 1400 employees are employed by the petitioner and they are the members of the three workers union who are respondents No.1 to 3. The provisions of Payment of Bonus Act,1965 are applicable to the petitioners. The petitioner offered bonus at the rate of 8.33 % for the accounting year 1988-89. But the same was not accepted by the workmen and they insisted for payment of bonus linked with productivity. Then the petitioner Company and the respondent Unions arrived at an agreed under Section-10(2) of the Industrial Disputes Act,1947 to refer the said dispute pertains to payment of Bonus for accounting year 1988-89 to the Industrial Tribunal referring the following terms of reference :

1. To determine the questions of bonus payable to the employees for the accounting year 1988-89 as per the provisions of the payment of Bonus Act,1965.

or

2. To determine the norms for payment of bonus linked with the productivity for the accounting year 1988-89.

The said reference dispute was referred to the Industrial Tribunal Baroda and it is numbered as 17 of 1991.

#. The petitioner had contended before the Industrial Tribunal that the petitioner had suffered losses in the accounting year 1988-89 and as per the provisions of Section-10 of the Payment of Bonus Act,1965, the petitioner is offering bonus at the rate of 8.33 %. As against this the respondents contended that the workmen are entitled to get the bonus linked with productivity. They further contended that earlier there was settlement between the Petitioner and its workmen on 10-10-1986 as regards the payment of bonus and in the said settlement the bonus was agreed and allowed on the bases of linking it with productivity and as there is no subsequent settlement between the parties and as the said settlement is not terminated by giving any notice of

termination in writing by both the parties to the said settlement. The learned Industrial Tribunal found favour with the contention raised by the respondents and hence he directed the petitioner to pay 19 % wages as bonus linked with productivity. The said award of the Industrial Tribunal, Baroda has given cause for the filing of the present petition.

#. Mr. K. S.Nanavati, Senior Counsel appearing for the petitioner has urged before me that the learned Industrial Tribunal has not taken into consideration the provisions of Section-8 & 10 as well as of Section 31 A and hence committed illegality in passing the award. He submitted that under Section 8 a workmen gets a statutory right to get Bonus and Section 10 provides for payment of Bonus linked with the profits made by the Industrial undertaking. Therefore the normal rule provided by the payment of Bonus Act is to pay the bonus linked with profits. Section 31 A is an exception to the said normal rule and it provides the payment of Bonus linked with productivity, if there happened to be agreement between the employer and the employees. He further submitted that the claim of bonus is governed by the provisions of Payment of Bonus Act, 1965 and the same could be governed by the Industrial Disputes Act, 1947.

#. Mr. Mansuri, learned advocate for the respondents submitted that the learned Industrial Tribunal has not committed any illegality or perversity in passing the award. He submitted that the earlier settlement between the parties is still binding on the parties as none of the parties to the said settlement has terminated the settlement by giving a notice in writing. He further submitted that the learned industrial court has passed the award relying on the judgment of Apex Court in L.I.C. Vs. D.J.Bahadur 1981(1) L.L.J.1 and he further submitted that the said decision of the Apex Court is applicable on all fours to the case before this court.

#. Before dealing with the submissions made on behalf of both sides and considering the decision of the Apex Court in L.I.C. Vs. D.J.Bahadur 1981(1)L.L.J.-1, I will like to deal with concerned provisions of the Payment of Bonus Act, 1965. Because in my opinion before considering and deciding the points arising in this matter one must acquaint oneself with certain provisions the said act of 1965. In my opinion, it is necessary to consider the provisions of section 8, 10, 11, 22 and 31 A. The provisions of Section 8 and 10 are as under :

"8. Eligibility for bonus - Every employee

shall be entitled to be paid by his employer in an accounting year, bonus, in accordance with the provisions of this Act, provided he has worked in the establishment for not less than thirty working days in that year.

10. Payment of minimum bonus. - Subject to

the other provisions of this Act, every employer shall be bound to pay to every employee in respect of the accounting year commencing on any day in the year 1979 and in respect of every subsequent accounting year, a minimum bonus which shall be 8.33 per cent of the salary or wage earned by the employee during the accounting year or one hundred rupees, whichever is higher, whether or not the employer has any allocable surplus in the accounting year :

Provided that where an employees has not

completed fifteen years of age at the beginning of the accounting year, the provisions of this section shall have effect in relation to such employee as if for the words "one hundred rupees", the words "sixty rupees" were substituted."

[Emphasis are supplied by me]

If the above provisions are considered then it will be quite clear that Section-8 creates a statutory right in favour of the workman to get Bonus. The Section 10 makes a provisions that the Bonus is payable in every accounting year and provides for the compulsory minimum bonus. Section 11 making provision for maximum Bonus. If section 10 and 11 are carefully read then it will be quite clear that the bonus is to be in every accounting year ranging between 8.33 % to 20 % of the wages as per the profits earned by the Industrial undertaking.

#. The section 31 A runs as under :

31-A Special provision with respect to

payment of bonus linked with production or productivity. Notwithstanding anything contained in this Act, (i) where an agreement or a settlement has been entered into by the employees with their

employer before the commencement of the payment of Bonus (Amendment) Act, 1976 (23 of 1976), or

(ii) where the employees enter into any agreement or settlement with their employer after such commencement,

for payment of an annual bonus linked with production or productivity in lieu of bonus based on profits payable under this Act, then, such employees shall be entitled to receive bonus due to them under such agreement or settlement, as the case may be ;

[Provided that any such agreement or settlement whereby the employees relinquish their right to receive the minimum bonus under Section 10 shall be null and void in so far as it purports to deprive them of such right :]

[Provided further that] such employees shall be entitled to be paid such bonus in excess of twenty percent of the salary or wage earned by them during the relevant year.]

If the above provisions of Section-31 A are considered then it will be quite clear that the said section is creating an exception to ordinary and general rule of the payment of Bonus on the basis of the profits earned by an industrial undertaking. Section is titled as a " Special Provision with respect to payment of bonus linked with production or productivity ". Therefore in order to claim a bonus linked with productivity the claimant must fulfil the requirement of Section 31 A. As per said section 31 A there must be an agreement or settlement between the employer and the employees to pay bonus linked with productivity. Thus if the provisions of Section 10, 11 and 31 A are read together then it would be quite clear that the bonus is to be determined in every accounting year and there must be a settlement or agreement between the employer and employee every year if the bonus is to be linked with the productivity.

#. Before considering the said claim as to whether the employees are entitled to claim and get bonus linked with the productivity, I would like to deal with one of the submission made by the learned senior counsel Mr.K.S.Nanavati. He submitted that the settlement

regarding the payment of bonus could not be enforced by taking aid of the provisions of Industrial Disputes Act,1947. He submitted that such a settlement is under provisions of the payment of Bonus Act and there is no specific provision in the payment of Bonus Act to give such a settlement a status of a settlement under the Industrial Disputes Act. In my humbler opinion, the said submissions of the learned senior counsel are not correct. It is necessary to refer to Section 22 of Payment of Wages Act,1965. Section 22 runs as under :

"22. Reference of disputes under the Act. Where any dispute arises between an employer and his employees with respect to the bonus payable under this Act or with respect to the application of this Act to an establishment in public sector, then, such dispute shall be deemed to be an industrial dispute within the meaning of the Industrial Disputes Act,1947 (14 of 1947), or of any corresponding law relating to investigation and settlement of industrial disputes in force in a State and the provisions of that Act or, as the case may be, such law, shall, save as otherwise expressly provided, apply accordingly.

If the above provisions of Section 2 are read then it will be quite clear that when any dispute arises between the employer and the employees with respect to payment of Bonus, the same will become an industrial dispute and will be governed by the provisions of Industrial Disputes Act,1947. Therefore when such a dispute arises and is settled by a settlement before the conciliation officer then it will stand governed by the provisions of Industrial Disputes Act,1947. The questions as to the effect of such settlement and duration of such settlement would depend on the terms of the settlement.

##. There is no dispute that a settlement regarding the dispute with respect to payment of Bonus has once taken place between the parties as per settlement at annexure-C. The only dispute between the parties is as to whether the claim for the payment of Bonus of the accounting year 1988-89 will be governed by provisions of Sections 8 & 10 of the Payment of Bonus Act or as per the terms of settlement at annexure "C". At the cost of repetition it must be stated that the general rule as regards the payment of Bonus is that the bonus is to be

linked with the profits earned by the industrial undertaking during the accounting year. But as provided by Section 31 A the employer and employees can by an agreement or settlement agree to pay the bonus linked with productivity. Bearing these aspects regarding payment of Bonus, I proceed to consider the rival claim.

##. The settlement at annexure 'C' is dated 10-10-1986. The terms No.1 of the settlement is as under.

"(1) In respect of payment of Bonus for accounting year :

- (i) July,1984 to June 1985
- (ii) July,1985 to June 1986
- (iii) July 1986 to June,1987
- (iv) July 1987 to June,1988

The workmen / member of the staff will be paid bonus linked with production / productivity in lieu of profit bonus payable based on the profit and loss account of the respective accounting years mentioned herein above."

Then the terms No.7 of settlement is as under :

"7. This settlement is in full and final satisfaction of the claims for Bonus for said accounting years."

If the above two terms of the settlement are considered together then it would be quite clear that the settlement between the petitioner and the respondent was in regard the payment of Bonus for only four accounting year running between July,1984 and June,1988. Along with the said terms it must be also remembered that the liability to pay Bonus or claim to get Bonus is arising in an accounting year and the said liability or claim depends on the profits or productivity of that accounting year. Therefore there must be specific agreement or settlement for every year or specific years. In view of the specific terms of the settlement between the parties as well as the provisions of the Section 10 and 31 A of bonus Act the said settlement could not be basis for determine the bonus for the accounting year from July,1988 to June,1989.

##. The learned labour court has relied on the decision of LIC Vs. D.J.BAHADUR 1981(1) L.L.J..1 for holding that the said settlement will be binding even for the accounting year from July,1988 to June,1989. But the

facts of the LIC Vs. D.J.BAHADUR, SUPRA must be considered. In para No.15 on page-8 the relevant facts of the case are stated. The said Para-15 runs as under :

"15. Consistently with the good relations between the Corporation and its workmen, the settlement of 1959 was followed by those of 1963, 1970 and 1972 providing for bonus for workmen in the service of the Corporation. Rocketing cost of living, rising aspirations and frustrations of socioeconomic life and the general expectations from model employers like the public sector enterprises, have led workmen in this country to make escalating demands for better emoluments, including the bonus. Naturally the workmen under the Corporation raised disputes for bonus and other improved conditions. The employer, consistently with the long course of conduct by those both sides as if into settlements dated January 24,1974 and February 6,1974, pursuant to the provisions of S.18 read with S.2(p) of the I.D.Act. Clause 8 of these settlements specified the scale of bonus and clause 12 thereof is more general and may be read here :

Clause 8. Bonus.

- (i) No profit sharing bonus shall be paid.
however, the Corporation may, subject to such directions as the Central Government may issue from time to time, grant any other kind of bonus to its Classes III and IV employees.
- (ii) An annual cash bonus will be paid to all
other terms and conditions attached to the admissibility and payment of bonus shall be as laid down in the settlement on bonus dated the 26th June,1972.

Clause 12

- (i) This settlement shall be effective from
1st April,1973 and shall be for a period of four years, i.e. from 1st April,1973, to 31st March,1977.

- (2) The terms of the settlement shall be subject to the approval of the Board of the Corporation and the Central Government.
- (3) This settlement disposes of all the demands raised by the workmen for revision of terms and conditions of their service.
- (4) Except as otherwise provided or modified by this settlement, the workmen shall continue to be governed by all the terms and conditions of service as set forth and regulated by the Life Insurance Corporation of India (Staff Regulations), 1960 as also the administrative instructions issued from time to time and they shall subject to the provisions thereof including any period of operation specified therein, entitled to the benefits thereunder. "

[Emphasis are supplied by me]

If the above para is carefully read, then it will be quite clear that Life Insurance Corporation (hereinafter to be referred as corporation) was having settlement providing bonus under Industrial Disputes Act, 1947 from 1959. There were settlements in 1959, 1963, 1970, 1972 and 1974. The termination by the employer last settlement of 1974 was under consideration before the Apex Court in this case of LIC VS. D.J.BAHARUR, SUPRA. Thus settlements for payment of Bonus were entered into between the employer and the employee even prior to payment of wages Act 1965 and under the Industrial Disputes Act. The claim of Bonus is not considered in this case of LIC Vs. Bahadur on basis of the Payment of Bonus Act but as the benefit given by employer in settlement under Industrial Disputes Act. The terms of the first settlement of 1959 were altered by the subsequent settlement of 1963. Thus the change or a alteration in terms of payment of bonus was taking place only by the subsequent settlement. Then the clause No.8(1) and (ii) [which are emphasised] of the Previous settlement of the year 1974 further shows the bonus was not linked either with the profits or with the productivity and all other terms and conditions of the previous settlement of 1972 were applicable. Therefore in view of the above stated facts namely (1) that

employer corporation was entering into settlements under Industrial Disputes Act for settling dispute of bonus with the employees from 1959 and every settlement was being replaced by fresh settlement (2) the payment of bonus was not linked either with profits or with the productivity and lastly (3) in every settlement there was no settlement regarding the payment of bonus of any particular or specific accounting year, the Supreme Court has held that there could not be termination of the said settlement unilaterally and the settlement will be governed by the provision of Section-19 of Industrial Disputes Act. As against this in the case before me the settlement clause No.1 and clause No.7 quoted above specifically lay that down that the settlement is for the year between July,1984 and June,1988 and the bonus was linked with productivity. The liabilities is on the basis of either the profits or the productivity of the accounting year. In the case before the Apex Court the employees had agreed to receive bonus without its linkage with either profits or with productivity and the bonus was treated like any other wages or allowances allalong by the employer and the employees and hence the settlement is held to be governed by Section 19 of Industrial Disputes Act 1947. In the case of LIC Vs. D.J.Bhadur, Supra the Corporation had also issued the notification wherein a claim was taken that the employees were not entitled to bonus and that they were not workmen. The Apex Court has negatived the claim of the Corporation that the employees were not 'workmen' as defined in Industrial Disputes Act,1947 and after holding them as workmen considered the claim of the corporation to deny the bonus. In the instant case the employer is not denying the claim of bonus. The employer has offered and paid the bonus as per the provisions of Section 9 of the Payment of Bonus Act, 1965. It must be also stated that the Apex Court has not considered the provisions of payment of Bonus Act,1965. There is no reference to the provisions of said Act of 1965, in the said judgment, claim of bonus was considered as benifits not as statutory right under the Payment of Bonus Act, 1965.

##. Therefore, in view of the above stated facts and circumstances in my humble opinion the case of LIC Vs. D.J.Bahadur 1981 (1) L.L.J.1 is not applicable on the facts to the case before me. Consequently I hold that the Industrial Tribunal of Baroda was not justified inholding that for the accounting year 1988-89 the employees of the Petitioner entitled to bonus on the basis of the earlier settlement. I therefore allow this petition and set aside and quash the award passed by the learned Industrial Court in Reference No.17 of 1991.

Rule is made absolute accordingly. No order as to cost.

Date : 16th July, 1998 (S.D. Pandit, J.)

(KPP)